

EXHIBIT N

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3
4 FREDERICK (RIC) SCHIFF; GLENN
5 BRAKEL; ALICE DICROCE; BRIAN
6 GREER; CLAYTON HARMSTON;
7 STEVEN HASKELL; MICAH HOPE;
8 DANIEL KELLY; ALEXANDER LENTZ;
9 BRANDON MCKELLEY; GERALD
10 NEWBECK; DAVID O'KEEFE; AND
11 THOMAS WALSH,

12 Plaintiffs,
13 vs.

14 No. : 4:19-cv-03260-YGR

15 CITY AND COUNTY OF SAN
16 FRANCISCO; GREG SUHR,
17 INDIVIDUALLY AND IN HIS
18 OFFICIAL CAPACITY AS FORMER
19 CHIEF OF POLICE, SFPD; WILLIAM
20 (BILL) SCOTT, INDIVIDUALLY AND
21 IN HIS OFFICIAL CAPACITY AS
22 CHIEF OF POLICE, SFPD, AND
23 DOES 1-20,

24 Defendants.

25 -----//

26 Remote Deposition of
27
28 FREDERICK RICHARD SCHIFF

29 Tuesday, March 16, 2021

30 REPORTED STENOGRAPHICALLY BY:
31 STACY J. TEGNER, CSR NO. 10622

32
33 WAGNER COURT REPORTING SERVICES
34 1819 Polk Street, No. 446
35 San Francisco, California 94109
36 (415) 982-4449

1 REMOTE APPEARANCES
2

3 FOR THE PLAINTIFF:

4 LAW OFFICE OF M. GREG MULLANAX

5 BY: M. GREG MULLANAX

6 Attorney at Law

7 2140 N. Winery Avenue, Suite 101

8 Fresno, California 93703

9 (559) 420-1222

10 Email: greg@lawmgm.com

11
12 FOR THE DEFENDANT:

13 OFFICE OF THE CITY ATTORNEY CITY AND COUNTY OF

14 SAN FRANCISCO

15 BY: PETER A. COWNAN

16 CAROLINE M. PAGE

17 Attorneys at Law

18 Fox Plaza

19 1390 Market Street, Fifth Floor

20 San Francisco, California 94102

21 (415) 554-3800

22 Email: peter.cownan@sfcityatty.org

23 caroline.page@sfcityatty.org

24
25 -----oOo-----

1 BE IT REMEMBERED THAT, on Tuesday, March 16,
2 2021, commencing at the hour of 10:07 a.m. by way of
3 remote videoconferencing, before me, STACY J. TEGNER,
4 CSR NO. 10622, a Certified Shorthand Reporter in and for
5 the State of California, personally appeared

10 | -----900-----

11 (The following proceedings were held via
12 videoconference, with the court reporter in
13 a remote location, separate and apart from
14 the attorneys and the witness. The
15 proceedings were stenographically reported
16 to the best ability of the court reporter
17 to hear and understand the proceedings.)

EXAMINATION

19 | BY MR. COWNAN:

20 Q. Good morning, Captain Ric. My name is Peter
21 Cownan. I am a deputy city attorney with the City of
22 San Francisco. Here also attending is Caroline Page,
23 who is my co-counsel on this case. Thank you for being
24 here this morning.

I want to start off just with some background

1 information.

2 Can you please just for the record state and
3 spell your name?

4 A. Sure. My name is Frederick, F-R-E-D-E-R-I-C-K,
5 Richard, common, and the last name is Schiff,
6 S-C-H-I-F-F.

7 Q. Thank you, sir.

8 And then you understand you are under oath
9 today; correct?

10 A. I do understand.

11 Q. And I know this is old news for you, but just
12 to go over it again, that oath is the same oath that you
13 would take in a courtroom and it requires you to tell
14 the truth today.

15 You understand that?

16 A. I do understand.

17 Q. Okay. And I understand that you've had your
18 deposition taken several times before; is that correct?

19 A. Five times, I think, with the city attorney's
20 office, being represented by the city attorney's office,
21 and several times in court, in civil court.

22 Q. When was the last time, if you can recall, that
23 you had your deposition taken?

24 A. That's a good question. I can't remember
25 whether it was a city attorney case or the city and

1 the people making selections under secondary criteria
2 use race and gender in the selection process based on
3 the prima facie case. So that's what I would say to
4 that.

5 Q. And I think perhaps I have a different
6 understanding or -- strike that.

7 I would like to hear, when you say "prima facie
8 case," what do you mean by that?

9 A. I mean that for looking at it for face value.
10 And maybe I'm using it incorrectly. But when we look at
11 what actually occurred and the probability that those
12 things occurred without using race and gender, the
13 indications are that race and gender had to have been
14 used, that there's no statistical explanation other than
15 race and gender; or, in our case, race and gender, but
16 unlawful selection criteria was used.

17 Q. Okay. I lost my train of thought. I'll come
18 back.

19 A. Take your time.

20 Q. I was going to ask you, we referred -- you
21 referred to statements that Chief Scott made.

22 When did he make those statements?

23 A. It was in a -- so in explanation, during the
24 month of November, other than COVID years, the Police
25 Officers Association holds a open board meeting.

1 They're all open, but this is a board meeting where
2 dinner is served and everyone is invited to come down.
3 And then in that process of the board meeting, generally
4 they bring in a guest speaker.

5 In this particular 2017, it was Chief Scott who
6 came in to speak to not only the board, the executive
7 board, the attorneys present, but well over 200 police
8 officers that were in attendance at the Irish Cultural
9 Center. And, again, as I said, setting the stage, that
10 occurred, other than COVID years, every 20 -- every
11 November.

12 Q. Okay. And I understand this was around
13 Thanksgiving; correct?

14 A. That is correct.

15 Q. Okay. And I think you've said this, but just
16 to be clear, we're talking about November 2017?

17 A. Correct.

18 Q. Okay. And what do you recall -- well, strike
19 that.

20 Have you already told me now everything you
21 recall Chief Scott saying at that meeting?

22 A. Oh, no.

23 Q. What else --

24 (Simultaneous speakers.)

25 ///

1 BY MR. COWNAN:

2 Q. I apologize. Continue.

3 A. No, no, well, I probably paused there. Go
4 ahead.

5 Q. I was just going to ask the next question, is,
6 what else do you recall him saying?

7 A. Okay. Keep in mind I have no notes in front of
8 me now, so it's ad hoc. And it is some -- what? Nearly
9 four years later, but I'll try and recount a number of
10 things that he said. It may not be sequential, so bear
11 with me.

12 He was introduced. He came up. It was one of
13 the first times that most of us had had an
14 opportunity -- I had met him just kind of socially
15 briefly, but we had heard -- had a chance to listen to
16 him speak.

17 As is likely to happen under these
18 circumstances, no one wanted to be the first person to
19 ask the chief a question in public. So the president of
20 the POA at the time, Marty, offered to pose the first
21 question. And promotional rounds had just occurred and
22 there were a lot of questions about how it had occurred
23 with the sergeants. And, again, the things I listed as
24 being concerns for me were evident on that sergeant's
25 list.

1 So Marty said -- Marty Halloran is his name, by
 2 the way -- said, "Well, Chief, let me ask the first
 3 question that I know is on the minds of all the officers
 4 here. Can you explain the promotional process to us?"

5 And I think the chief followed through with a
 6 fairly accurate explanation of how he viewed the
 7 promotional process.

8 And he said that, "We give a service -- civil
 9 service exam, you apply for it. If you meet certain
 10 conditions, you're eligible to take the exam. You take
 11 the exam. It's run by civil service. The scores are --
 12 are given out in rank order. Then it goes before a
 13 committee of commanders and deputy chiefs, who review it
 14 for secondary criteria, and then those results are given
 15 to me. However, I am not obligated to follow secondary
 16 criteria." Again, I'm speaking for him. "And in
 17 this -- in these circumstances, I didn't use it. I
 18 promoted to obtain the goals of the department. I
 19 promoted using race and gender as selection criteria."

20 Now, I'm paraphrasing. I actually wrote the
 21 exact notes down when that occurred; so my summary is
 22 close to that. I might not be exact as to what I had
 23 written down at the time.

24 Q. The notes that you wrote down, when did you
 25 write them? When did you prepare those notes?

1 A. I wrote those immediately after the meeting.

2 Q. Was Chief Scott there -- well, strike that.

3 What was the response to Chief Scott's
4 statements?

5 A. By the public?

6 Q. Whoever was in the hall.

7 A. Well, I was standing next to -- I was a
8 lieutenant at the time standing next to a captain, and
9 we were shocked.

10 Q. Who was the captain that you were standing next
11 to?

12 A. Retired Captain Jerry DeFilippo.

13 Q. Can you do your best to spell the last name?

14 A. I could do better, but I'm going to have to
15 pick up my phone. It's a capital D-E . . .

16 D-E-F-I-L-I-P-P-O.

17 Q. Okay.

18 A. And I have that because his wife worked for the
19 police credit union. So . . .

20 Q. I was asking you about reactions.

21 Do you recall any other reactions in the moment
22 to Chief Scott's statement?

23 A. Just widespread shock and amazement.

24 Q. Do you recall having any specific conversations
25 with anyone following -- that night following that

1 conversation?

2 A. Oh, a bunch of people.

3 Q. Do you recall any specific conversations you
4 had?

5 A. Sure.

6 I had conversation with a POA attorney in
7 attendance, Greg Adams. And I believe standing with us
8 was Matt -- you want me to try and look up his name?

9 Q. Just tell me what you remember.

10 A. Did you hear what I hear -- I heard? Is that
11 lawful criteria? Can you use race and gender in your
12 selection process to meet the needs of the department?
13 I was adamant that you could not. I think there were a
14 lot of people who were unsure -- that the chief said it
15 so brazenly that they -- they felt that there must --
16 and, again, this -- I'm paraphrasing conversations --
17 that there must be something that we don't know about
18 that gives this chief special authority to do that.

19 My response to anybody who said that to me is I
20 don't know any such rule or permission or opportunity to
21 violate state or federal law or department policy or
22 civil service policy or city policy.

23 So that was the gist of the conversation, and
24 that was pretty much widespread throughout.

25 Some people were in the back and hadn't heard

1 it and were talking to other people who had or some
2 people heard parts of it and some people were confused.
3 That was pretty much the lay of the land.

4 Q. You mentioned an individual Matt.

5 Who is that person?

6 A. There were two POA attorneys that I was aware
7 of present. One was Greg Adams and one was his
8 associate Matt. And it starts with a T. I want to say
9 like Matt Taylor.

10 Q. Okay.

11 A. But I don't remember his -- his last name. I
12 believe he was the attorney there. There were two -- it
13 was the two of them talking to myself in conversation.
14 I spoke to Marty Halloran at the time. Several people
15 on the board.

16 Again, as you can imagine, it was kind of a
17 shocker.

18 Q. Any of the other board members' names that you
19 can recall that you spoke to that night?

20 A. No, because part of the problem, it's difficult
21 to remember whether I spoke to them that night or later
22 on.

23 So, again, I spoke to a large number of people,
24 and I would have to really think back as to who was
25 present. I may have kept notes as to some of the people

1 STENOGRAPHER'S CERTIFICATE
2

3 I certify that the foregoing proceedings in the
4 within-entitled cause were reported at the time and
5 place therein named;

6 That said proceedings were stenographically
7 reported by me, a duly Certified Shorthand Reporter of
8 the State of California, to the best of my ability via
9 remote teleconferencing, and were thereafter transcribed
10 into typewriting;

11 That before completion of the deposition,
12 review of the transcript [X] was [] was not
13 requested. If requested, any changes made by the
14 deponent (and provided to the reporter) during the
15 period allowed are appended hereto.

16 I further certify that I am not of counsel or
17 attorney for either or any of the parties to said cause
18 of action, nor in any way interested in the outcome of
19 the cause named in said cause of action.

20 In WITNESS WHEREOF, I have hereunto set my hand
21 this 30th day of March, 2021.

22
23 
24

25 STACY J. TEGNER, CSR
Certified Shorthand Reporter
Certificate No. 10622